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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,231	08/02/2003	Daniel D. Coppens.	QFIX-3	2448

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GOMEZ INTERNATIONAL PATENT OFFICE, LLC  
1501 N. RODNEY STREET  
SUITE 101  
WILMINGTON, DE 19806

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
3673	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/633,231

Applicant(s)

COPPENS ET AL.

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11,13-17,19-26,28-36 and 38-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-11,13-16,20,31,32,36 and 38-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17,19,21-26,28-30 and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 06, 2006 has been entered.

#### ***Election/Restrictions***

Claims 1-11, 13-16, 20, 31, 32, 36, and 38-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 29, 2005.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 17, 21-26, 28, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver et al. '116.**

Oliver et al. '116 discloses, Figs. 1 and 2, a patient support device having at least one index positioning means 15 on a first side and at least one index positioning means

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15 on a second side. The sidewalls can be seen as chamfered. An accessory device removably secured to the support is as shown in Fig. 4. An accessory device adaptor is at 20 with an attachment feature 30/40, (in the form of a clamp, cam lock, interference fit clip, pin, post and bar), on the first end of the adaptor for mateably joining the adaptor to the at least one positioning feature on the first side, an element 25 on the second end in contact with the second side of the patient support device, and an attachment means, (as can be seen in Fig. 4), for mateably joining and securing an accessory device to the accessory device adaptor. Oliver et al. does not appear to specifically disclose a “wherein the at least one positioning feature on the first side is asymmetrically spaced from the at least one positioning feature on the second side such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature”.

However, it has been well established that omission of an element and its function is obvious if the function of the element is not desired. See *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). See also *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Therefore, to have formed the Oliver et al. ‘116 support device with positioning means along only one edge, thus providing the necessary positioning means without undue work on the table stock, would have been obvious to one having ordinary skill in the art at the time the invention was made. The resulting support of Oliver et al. ‘116 would thus possess at least one index positioning means 15 on a first side being asymmetrically spaced from an at least one index positioning means 15 on the second

side "such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature".

**Claims 17, 19, 21-26, 28, 29, 30, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO Publication WO 01/35828, (WIPO '828) in view of Oliver et al. '116.**

WIPO '828 discloses, Figs. 1 and 4, a patient support device having at least one index positioning means, (any portion or extent of the edge), on a first side and at least one index positioning means, (any portion or extent of the edge), on a second side with the at least one index positioning means on a first side being asymmetrically spaced from an at least one index positioning means on the second side, (e.g., one portion of the edge on a first side is asymmetrically spaced from one offset portion or extent on a second side). The sidewalls can be seen as chamfered with the top surface extending laterally beyond at least one sidewall to form a lip. As such, the indexing means is formed or "contained" in the lip. An accessory device removably secured to the support is at 18/20.

Arguments to Oliver et al. '116 can be found above. To have provided the WIPO '828 support table 10 with index positioning means in the form of a notch along opposite edges thereof as well as provide for both an accessory attachment means and an accessory device, thus allowing for attachment of a patient restraint accessory in an indexing approach, would have been obvious to one having ordinary skill in the art at

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the time the invention was made as taught by Oliver et al. '166. To have provided the positioning means With such a modification a patient support device having at least one index positioning means 15 on a first side and at least one index positioning means 15 on a second side with the at least one index positioning means 15 on a first side being asymmetrically spaced from an at least one index positioning means 15 on the second side "such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature", thus providing the necessary positioning means without undue work on the table stock, would have been obvious to one having ordinary skill in the art at the time the invention was made particularly, since it has been well established that omission of an element and its function is obvious if the function of the element is not desired. See *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). See also *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 354**

M. Safavi  
December 08, 2006